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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

NICOLAS DELGADO,

Plaintiff and Appellant,

v.

STATEWIDE FUMIGATION SAN DIEGO
COUNTY, INC.,

Defendant and Respondent.

D072966

(Super. Ct. No. 37-2016-00018022-
CU-OE-CTL)

APPEAL from an order of the Superior Court of San Diego County,

Timothy Taylor, Judge. Reversed.

Rastegar Law Group, Farzad Rastegar, Thomas S. Campbell and Nida Siddiqui for
Plaintiff and Appellant.

Simpson Delmore Greene, Terence L. Greene and Ross M. Poole for Defendant
and Respondent.

I.

INTRODUCTION

Plaintiff Nicolas Delgado brought this action against defendant Statewide Fumigation San Diego County, Inc. (Statewide), his former employer, alleging various violations of the Labor Code and Business and Professions Code section 17200. Delgado filed the case as a putative class action, and also asserted a cause of action for the alleged violations of the Labor Code as a PAGA claim. Delgado appeals from the trial court's order that expressly dismissed his class claims and ordered that his case proceed on an individual basis only.

On appeal, Delgado contends that the trial court abused its discretion in declining to continue the hearing date for the motion for class certification. According to Delgado, the court was aware that he had been unable to obtain necessary discovery materials from Statewide, given that approximately a month prior to the class certification hearing, the court entered an order compelling Statewide to provide the requested discovery. Delgado maintains that he could not have obtained the discovery materials and prepared a class certification motion in the time allotted by the court's prior order setting the class certification hearing date. He states that he informed the court about the problems he was having in obtaining discovery and requested a further continuance prior to the hearing date, but that the court nevertheless went forward with the hearing. Delgado also contends that the trial court erred in ruling that a class action would not be manageable on the grounds that the defendant was purportedly insolvent and had failed to retain new counsel after its previous attorneys withdrew from representing it. Finally, Delgado

contends that, to the extent the trial court limited him to proceeding solely on his individual claims, the court effectively dismissed his PAGA cause of action. This, Delgado argues, was erroneous.

We conclude that the trial court's decision not to continue the date for the hearing on class certification was an abuse of discretion. The short amount of time that the trial court allowed between its orders compelling production of documents and scheduling the deposition of Statewide's "Person Most Knowledgeable" (PMK), and the deadline for filing the motion for class certification, effectively denied Delgado a meaningful opportunity to conduct discovery on class action issues before it issued its order denying class certification—an order that had a significant impact on the viability of Delgado's case. (See *Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1226 (*Hendershot*) [due process requires that parties be provided a full opportunity to brief the issues and present evidence before court issues an order regarding class certification motion, given the potential significant impact such an order has on the viability of a case].)

Although we reverse the trial court's class certification order on the ground that the trial court abused its discretion in failing to continue the class certification hearing, we also address Delgado's contention that the trial court erroneously limited him to individual relief, because there is a possibility that this error could recur on remand in the event that the court ultimately determines that no class should be certified. On this issue, we conclude that the court's ruling limiting Delgado to pursuing only his individual claims for relief had the effect of erroneously dismissing his PAGA representative claim.

We therefore reverse the trial court's order and remand the matter with directions to permit Delgado time to attempt to obtain the discovery that the court previously ordered Statewide to produce, and to accord Delgado sufficient time after obtaining this discovery to file his motion for class certification.

II.

FACTUAL AND PROCEDURAL BACKGROUND

Delgado filed this putative class action against Statewide on May 27, 2016, on behalf of himself and other similarly situated current and former employees of Statewide. Delgado alleged multiple causes of action against Statewide. The causes of action included a variety of Labor Code violations, such as the failure to provide meal periods, to provide rest periods, to pay minimum and straight time wages, to pay overtime compensation, to pay wages in a timely manner upon termination of employment, and to provide accurate statements and maintain required records. Delgado also alleged a cause of action for unfair business practices under Business and Professions Code section 17200, et seq. (Section 17200). Delgado asserted all of the Labor Code violations, and the Section 17200 claim, on behalf of himself and on behalf of a class of similarly situated employees. Finally, Delgado asserted a representative cause of action under the Private Attorneys General Act (PAGA), Labor Code sections 2698, et seq., for all of the violations of the Labor Code alleged elsewhere in the complaint.

According to Delgado, Statewide filed an answer on September 13, 2016.¹

¹ Statewide acknowledge service of the summons and complaint as of July 21, 2016.

The trial court held a Case Management Conference with the parties on October 28, 2016. At the Case Management Conference, the trial court scheduled a hearing on Delgado's anticipated motion for class certification for July 21, 2017.

On May 9, 2017, the parties filed a joint stipulation to continue the hearing on the anticipated motion for class certification. In the stipulation, the parties stated that they were seeking a six-month continuance for multiple reasons, including the fact that Statewide was "contend[ing] it is in a state of financial hardship and is incapable of paying a judgment on Plaintiff's claims," that Statewide had "objected to the deposition [of the PMK that Delgado had noticed] and the Request for Production of Documents" that Delgado had propounded, and that defense counsel "believes it may have to withdraw as counsel, due to Defendant's financial condition," such that "judicial economy and the resources of the parties will be best served if the [m]otion for [c]lass certification hearing and filing deadline are continued by approximately six month[s]."

The trial court denied, without comment, the parties' stipulated request to continue the hearing date for the anticipated motion for class certification.

Later that same month, on May 30, Statewide filed a "Joint *Ex parte* Application to Continue Motion for Class Certification Hearing." (Some capitalization omitted.) The parties jointly sought a six-month continuance of the anticipated hearing on the motion for class certification. In addition to the reasons that the parties had provided in the May 9 request, they stated that they were "exploring the possibility of settling the matter."

Upon the conclusion of the *ex parte* hearing, the trial court issued a minute order denying the parties' joint application for a continuance, stating only, "The court is

inclined to keep the previously scheduled dates in place. [¶] It is now left for plaintiff's counsel to determine whether to proceed with the class claims."

On June 14, 2017, two weeks after the trial court issued its minute order denying the joint request for a continuance of the class certification hearing, Delgado filed an *ex parte* application to compel responses to the requests for production of documents that he had propounded on Statewide. In response to the *ex parte* application, the court scheduled a hearing on Delgado's motion to compel for July 21, 2017, the date the court had originally set for the class certification hearing, and treated Delgado's *ex parte* application papers as his moving papers with respect to the motion to compel. The court also continued the class certification hearing date to September 1, 2017.

On July 11, 2017, after much back and forth with counsel for Statewide regarding scheduling the deposition of its PMK, Delgado returned to court with an *ex parte* application for an order to compel a PMK deposition. The following day, July 12, the court heard arguments from the attorneys for both parties, and thereafter scheduled a hearing on Delgado's motion to compel the deposition of a PMK on July 21, 2017, the same date on which the motion to compel responses to the pending request for production of documents was set. The court also ordered that a Case Management Conference in the matter would be held on the same date as the motion for class certification—September 1, 2017.

On July 19, 2017, two days prior to the scheduled hearing on the motions to compel outstanding discovery, the trial court issued tentative rulings indicating its inclination to grant both motions to compel.

The following day, July 20, counsel for Statewide submitted a Notice of Withdrawal to the court. The record does not demonstrate that Statewide retained other counsel to represent it in this matter in the trial court.

On July 21, the trial court issued a minute order adopting its tentative rulings and granting Delgado's motions to compel responses to the outstanding discovery requests. In doing so, the court ordered Statewide to produce its PMK for a deposition to be conducted on July 31, 2017, which was approximately a month before the date set for the hearing on the motion for class certification. The court did not set any date by which Statewide was to produce the documents that the court was ordering Statewide to produce pursuant to Delgado's motion to compel.

According to the California Rules of Court, for a class certification hearing date set on September 1, 2017, Delgado would have been required to file his motion for class certification by August 4, 2017, which was four days after the date of the deposition that the court had set. (See Cal. Rules of Court, rule 3.764(c)(1) [notice of motion to certify a class must be filed and served at least 28 calendar days prior to the date of the class certification hearing].) Delgado did not file a formal motion for class certification by August 4, 2017. However, Delgado filed his Case Management Statement on August 18, 2017. In that document, in the portion of the form where the court asks the parties to indicate whether they have a request for any additional matters to be "considered or determined at the case management conference," Delgado indicated that he was requesting that the court continue the class certification hearing date due to Statewide's failure to comply with the court's orders that it produce its PMK for deposition and that it

produce the documents that Delgado had requested. Delgado also indicated in his Case Management Statement, in the portion of the form that asks parties to indicate whether they intend to file any other motions before trial, that he intended to file a motion to strike Statewide's answer to the complaint, due to Statewide's failure to provide the discovery that it had been ordered to produce, and that he also planned to file a motion to continue the hearing on the motion for class certification.

Six days later, on August 24, the court issued a tentative ruling with respect to the class certification hearing that was scheduled for September 1. In the tentative ruling, the court indicated its intention to deny Delgado's request in his Case Management Statement to continue the class certification hearing. The court further indicated its intention to deny any motion for class certification (even though Delgado had not yet filed his motion for class certification), and to strike Delgado's class allegations from the complaint. After stating its intention to deny class certification and to strike the class allegations, the court added, "The defendant is apparently insolvent and is unrepresented, and this presents tremendous management issues were the court to certify the case notwithstanding plaintiff's failure to advance evidence supporting certification." The court then indicated that it would order Delgado to submit an *ex parte* application for an order striking Statewide's answer to the complaint, and would require Delgado to proceed via default prove-up "with respect to his individual claims." The court warned that if Delgado failed to proceed as ordered, the court would "simply dismiss the case."

Seven days later (and one day prior to the scheduled date for both the Case Management Conference and the hearing on the motion for class certification), Delgado

submitted a motion to strike Statewide's answer and a corresponding motion to continue the class certification hearing. In his motion, Delgado explained that Statewide had failed to replace its counsel after its original counsel had withdrawn, and that Statewide was "not cooperating with Plaintiff in the discovery process." Delgado listed the multiple times that he had noticed a deposition for a PMK and indicated that despite the trial court's order that this deposition take place, Statewide had failed to produce anyone for deposition on the appointed date, and had also failed to respond in any way to Delgado's request for documents. Delgado indicated that Statewide's failure to replace its counsel precluded Delgado's attorneys from being able to communicate with Statewide, and was preventing Delgado from being able to "file supporting documents to successfully move for class certification at this time."

The following day, September 1, 2017, the trial court held a joint case management conference and hearing regarding class certification. After hearing argument from Delgado's counsel, the court affirmed its tentative ruling denying Delgado's request to continue the hearing on the motion for class certification and also denying on the merits any motion for class certification. The court also issued an order to show cause why the case should not be dismissed, and set a hearing on the order to show cause for November 3, 2017.

On October 5, 2017, Delgado filed a notice of appeal from the court's order denying class certification and effectively dismissing his PAGA claim.²

III.

DISCUSSION

Delgado challenges the trial court's denial of class certification, and the court's implicit dismissal of his representative PAGA claim. The relevant portion of the trial court's order states:

"By failing to file moving papers addressing the factors outlined immediately above, plaintiff has failed to carry his burden of demonstrating the propriety of class certification. Accordingly, the motion is denied. The request for another continuance of the class certification motion, buried in plaintiff's CMC questionnaire (ROA 63, page 5, item 18), is denied. The class allegations are ordered stricken. The defendant is apparently insolvent and is unrepresented, and this presents tremendous management issues were the court to certify the case notwithstanding plaintiff's failure to advance evidence supporting certification.

"Plaintiff is ordered forthwith to present an *ex parte* application for an order striking defendant's answer. Defendant must thereafter forthwith proceed via default prove-up with respect to [Plaintiff's] individual claims. The court will set an OSC re dismissal in about 60 days, and if plaintiff does no[t] proceed as set forth above, the court will simply dismiss the case."

² The record discloses that subsequent to the filing of the notice of appeal, the trial court issued a minute order granting Delgado's motion to strike Statewide's answer and ordering Delgado to file default papers and proceed with a default prove-up for his individual claims against Statewide.

A. *The trial court abused its discretion in declining to continue the hearing date for the motion for class certification*

Delgado asserts that the trial court abused its discretion in denying his request for an additional continuance of the hearing on the motion for class certification because the court was aware that Statewide had not complied with the court's order to produce documents that Delgado needed to prepare his motion for class certification and had failed to produce its PMK for deposition, as the court had ordered. According to Delgado, courts "routinely hold that class[-]wide discovery is required prior to filing a class certification motion, especially in the wage and hour context." Delgado further contends that " '[d]ue process requires an opportunity to conduct discovery on class action issues before documents in support of or in opposition to the motions are filed, and a full opportunity to brief the issues and present evidence,' " citing *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 836.

A trial court has broad discretion to grant or deny a continuance, and the court's exercise of that discretion will be reversed only when an abuse of discretion is clear. (*Link v. Cater* (1998) 60 Cal.App.4th 1315, 1321.) However, a court's discretion should be exercised " 'in conformity with the spirit of the law' " and should not be used to " 'defeat the ends of substantial justice.' " (*People v. Jacobs* (2007) 156 Cal.App.4th 728, 740–741 (*Jacobs*).)

On this record, we conclude that the trial court's refusal to continue the class certification hearing and its denial on the merits of any motion for class certification, " 'defeat[ed] the ends of substantial justice' " (*Jacobs, supra*, 156 Cal.App.4th at p. 741),

and thus constituted an abuse of discretion. Because, under the Rules of Court, Delgado would have had to file his motion for class certification just a few days after the date on which the court ordered Statewide to produce its PMK to sit for a deposition, and a mere two weeks after the court issued its order compelling Statewide to produce documents that the court had determined Delgado needed in order to prepare his motion for class certification (but without setting a deadline for the completion of this production), the court's decision not to continue the hearing date effectively precluded Delgado from obtaining necessary discovery in time to prepare his motion for class certification.

Public policy has long required California courts to approach class certification from a position of favor rather than one of reluctance, as expressed by the California Supreme Court decades ago: "[T]his state has a public policy which encourages the use of the class action device" (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 473.) This public policy extends to the proceedings necessary to permit a plaintiff to fully present evidence relevant to determining whether a particular action is amenable to class treatment. For example, the California Rules of Court not only acknowledge the trial court's ability to set a deadline for a class certification motion, but they also anticipate the need for discovery relevant to class certification to take place prior to any hearing on the motion:

"A motion for class certification should be filed when practicable. In its discretion, the court may establish a deadline for the filing of the motion, as part of the case conference or as part of other case management proceedings. *Any such deadline must take into account discovery proceedings that may be necessary to the filing of the motion.*" (Cal. Rules of Court, rule 3.764(b), italics added.)

It is generally understood that each party to a putative class action "should have an opportunity to conduct discovery on class action issues before its documents in support of or in opposition to the motion must be filed." (*Carabini v. Superior Court* (1994) 26 Cal.App.4th 239, 244.) Indeed, it is clear that "[p]laintiffs lacking adequate evidence on class issues may reasonably defer moving to certify or seek a continuance to gather evidence, and trial courts should avoid ruling on the merits until satisfied that a plaintiff has had a fair opportunity to present the case for certification." (*Stephen v. Enterprise Rent-A-Car* (1991) 235 Cal.App.3d 806, 814, italics added.) " 'It is an abuse of discretion for a trial court to determine class certification questions before the parties have an opportunity to conduct discovery and present evidence on certification issues.' [Citation.] 'Due process requires an order with such significant impact on the viability of a case not be made without a full opportunity to brief the issues and present evidence.' [Citation.]" (*Hendershot, supra*, 228 Cal.App.4th at p. 1226.)

In cases such as this, where employment abuses are alleged, it is very often the case that the information most relevant to class certification and the merits of the action is in the sole possession of the defendant and is unobtainable from other sources. (See, e.g., *Brum v. MarketSource, Inc.* (E.D.Cal., Aug. 14, 2018, No. 2:17-cv-241-JAM-EFB) 2018 WL 3861558, at p. *3 [in putative class action alleging California Labor Code violations, "[t]he requests at issue seek information relevant to numerosity, commonality, and typicality, which plaintiffs must establish to certify the proposed class and subclass," and plaintiffs were entitled to the requested discovery because "defendants are the parties in possession and control of the requested information, and absent an order compelling them

to produce the requested discovery, plaintiffs will not be able to obtain evidence necessary for a class certification motion"]; *McCowen v. Trimac Transportation Services (Western), Inc.* (N.D.Cal., Sept. 4, 2015) 2015 WL 5184473, at p. *3 ["[T]he necessary antecedent to the presentation of evidence [regarding class certification] is, in most cases, enough discovery to obtain the material, especially when the information is within the sole possession of the defendant"]; *Landers v. Quality Comm., Inc.* (9th Cir. 2014) 771 F.3d 638, 645, as amended (Jan. 26, 2015) ["most (if not all) of the detailed information concerning a plaintiff-employee's compensation and schedule is in the control of the [employer] defendants"].)

In this case, at the first Case Management Conference, which was held on October 28, 2016, the court set the class certification motion for a date approximately eight months later, July 21, 2017. The record demonstrates that in the intervening months, Delgado attempted to obtain discovery from Statewide without having to involve the court. Delgado propounded written discovery and noticed a deposition for Statewide's PMK for February 21, 2017. Statewide objected to virtually all of the propounded discovery and the deposition, and claimed that it would be unable to pay a judgment on a class-wide basis. In early May 2017, both parties agreed to move the hearing date, given their continuing attempts to resolve their discovery disputes. The parties jointly sought a continuance from the court on two separate occasions. Despite the parties' advising the court that one of the multiple reasons they were requesting a continuance of the motion for class certification was that Statewide was objecting to both the deposition that Delgado had noticed and to the request for production of documents that Delgado had

propounded, the court declined to move the July 21, 2019 hearing date, without explanation.

At this point, Delgado's counsel sought the assistance of the trial court in obtaining the discovery that he was seeking by filing an *ex parte* application to compel discovery responses from Statewide. The court appears to have recognized that maintaining the July 21, 2017 class certification hearing date was untenable, given that the court calendared the hearing on Delgado's motion to compel hearing on that date and moved the date of the hearing on class certification to September 1.

As the trial court was undoubtedly aware, under the Rules of Court, rule 3.764(c)(1), Delgado would have to file and serve his notice of motion and memorandum in support of certifying a class at least 28 calendar days prior to the September 1 hearing. Delgado would thus have had to file all of his class certification papers on or before *August 4, 2017*. Yet a mere two weeks earlier, on July 21, 2017, the trial court had ordered Statewide to produce its PMK for a deposition, and ordered that deposition take place on July 31, 2017—only four days prior to the August 4 date on which Delgado would have to file his moving papers. Even assuming that the deposition could have gone forward on that date (the record demonstrates that Statewide did not produce any individual at the time set for the deposition), Delgado likely would not have had sufficient time to obtain a copy of the deposition transcript from a court reporter, let alone time to review its contents and use it to prepare his motion papers. Further, in its July 21 order compelling Statewide to produce the documents that Delgado had requested, the court did not set any deadline by which Statewide had to produce that discovery. Even if

Statewide had immediately gone to work to collect and curate the relevant documents, given the practicalities of class-wide documentary production, it would have been highly unlikely that Delgado would have even *received* any of the documents that the court had ordered Statewide to produce, let alone had time to review the documents for use in briefing the motion, by the August 4 filing date. In addition, the court had been made aware at the time it issued its final ruling adopting its tentative ruling granting Delgado's motions to compel, that Statewide's counsel had withdrawn from the case, and that Statewide had not replaced its counsel. Given this circumstance, it should have been obvious to the court that Delgado would not be able to obtain any of the relevant discovery that the court had ordered Statewide to produce in time for his attorneys to timely prepare and file his class certification motion. Despite this, when the court ordered Statewide to produce the documents relevant to Delgado's class claims, the court did not continue the class certification hearing date. Instead, the court complicated the matter by setting a Case Management Conference on the same date on which the motion was scheduled to be heard.

In addition, Delgado specifically requested a further continuance of the class certification hearing, albeit in his Case Management Statement, which he filed 28 days after the court granted his motions to compel and 14 days prior to the September 1 date set for the class certification hearing and Case Management Conference. The trial court appears to have faulted Delgado for making his request to continue the certification hearing in his Case Management Statement rather than in a separate motion. However, the Case Management Statement form specifically asks parties to identify the matters

they want the court to address at the upcoming Case Management Conference, and Delgado responded to this question by stating that he wanted the court to continue the class certification hearing date. The trial court was clearly aware that Delgado was asking to continue the class certification hearing, since the court specifically mentioned the request and denied it in its order denying class certification. Delgado also filed a more formal request for a continuance a few days prior to the hearing date. It is thus clear that the court was aware that Delgado was seeking a continuance of the class certification hearing date due to outstanding discovery issues.

It is also clear that the trial court was aware that Delgado had not been able to obtain the discovery from Statewide that the court had just weeks earlier determined Delgado was entitled to obtain—discovery that Delgado informed the court was necessary to enable him to prepare his class certification motion papers. The court clearly knew that Statewide had not complied with the court's discovery orders and was aware that Statewide had failed to retain new counsel. However, rather than order Statewide to obtain new counsel and to comply with the court's discovery orders, and continue the class certification matter to provide time for these things to occur (see *Waters v. Advent Product Development, Inc.* (S.D.Cal., Feb. 13, 2012) 2012 WL 12952682, at p. *2), the trial court effectively penalized *Delgado* by denying his request for a continuance. In doing so, the court implied that Statewide's claimed insolvency and

the withdrawal of its counsel somehow weighed against allowing the case to proceed as a class action.³

By denying Delgado's request to continue the hearing date for the motion for class certification, the trial court effectively rewarded Statewide's recalcitrant discovery-related behavior. Typically, a party's obstructionist conduct with respect to discovery will result in the imposition of sanctions (see Code of Civ. Proc., § 2023.030 [providing for the issuance of monetary sanctions, issue sanctions, evidence sanctions, terminating sanctions, and contempt for discovery violations]). In this, case, however, Statewide effectively *benefited* from putting off providing the requested discovery regarding class issues for as long as possible when the court denied Delgado's request for a continuance of the class certification motion. Although the court eventually did issue a sanction against Statewide for its recalcitrance—i.e., the court struck Statewide's answer—the court did not do this until *after* it had denied Delgado's request for a continuance of the

³ It is not clear that the trial court relied on these two factors—Statewide's lack of counsel and its purported insolvency—as a basis to deny class certification. However, it does appear that these factors may have played some role in the court's decision to deny a further continuance and to deny class certification. A court's reliance on these factors to deny class certification would not be appropriate. The questions to be answered in determining whether a class should be certified center around particular procedural issues, including whether there exist "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class. [Citation.]" (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) Whether a corporate defendant is insolvent or continues to attempt to avoid responsibility by refusing to hire counsel do not relate to whether common questions predominate, whether there are claims or defenses typical of a class, or whether a class representative can adequately represent the class. Further, the record on appeal does not demonstrate that Statewide presented evidence that it was, in fact, insolvent. Thus, any reliance on this factor would have been inappropriate on this ground, as well.

class certification hearing and *after* it had limited the scope of the case significantly by allowing Delgado to pursue only his own individual claims. Thus, despite the court's awareness that Statewide was not complying with the court's orders and that Delgado had been unable to obtain the discovery necessary to his class certification motion, the court effectively rewarded Statewide by turning a case that had been filed as class litigation into a significantly less burdensome—and potentially significantly less costly—one.

Given this record, the trial court's denial of Delgado's request for a continuance of the hearing on the class certification motion deprived Delgado of a fair opportunity to obtain and present evidence necessary to his class certification motion. Although one could argue that Delgado's attorneys could have filed a more formal motion for a continuance at an earlier point in time, given the history of the case, and the proximity in time of the court's multiple proceedings regarding discovery matters to Delgado's request for a continuance, the court was aware of the predicament in which Delgado had been placed, through no fault of his own.

Under these circumstances, we conclude that the trial court abused its discretion in denying Delgado's request to continue the hearing on the class certification motion. We therefore reverse the court's order and remand the matter with directions to the trial court to permit Delgado sufficient time to attempt to obtain the discovery that the court previously ordered Statewide to produce and to file his papers in support of class certification. In setting a new date for a hearing on the motion for class certification, the court shall consider how much time is reasonably necessary for Delgado to obtain the discovery that the court previously compelled and to prepare the motion.

B. *The trial court erred in making a ruling that effectively dismissed Delgado's PAGA claim and erroneously limited him to pursuing individual relief only*

Delgado contends that the trial court's ruling effectively dismissed his PAGA claim by limiting him to recovering only individual relief. He asserts that this was error because a PAGA representative action does not have to be certified as a class action. We agree with Delgado that the trial court's order resulted in the implicit dismissal of Delgado's PAGA claim. The court ordered Delgado to move *ex parte* for an order striking Statewide's answer, and then ordered that he "must thereafter forthwith proceed via default prove-up with respect to his *individual claims*." (Italics added.) In so limiting the relief that Delgado could seek, the court effectively dismissed Delgado's eighth cause of action in which he set forth a PAGA cause of action, seeking civil penalties for the violations of the Labor Code alleged elsewhere in the complaint. As we explain further, this was error.⁴

⁴ Our full reversal of the trial court's order denying class certification means that we have no need to address this additional claim of error. However, we will nevertheless address it, given that it is possible that the error could recur on remand if, after providing Delgado with a reasonable opportunity to conduct meaningful discovery on issues related to class certification, the trial court nevertheless concludes that this case is not appropriate for class treatment.

Under PAGA, "an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—[may] pursue penalties for all the Labor Code violations committed by that employer." (*Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751.) Before PAGA, such civil penalties could be collected only by the Labor and Workforce Development Agency. (*Home Depot U.S.A., Inc. v. Superior Court* (2010) 191 Cal.App.4th 210, 216.) Under PAGA, seventy-five percent of any penalties collected by a PAGA representative are distributed to the LWDA, while the remaining 25 percent are distributed to the aggrieved employees. (Lab. Code, § 2699, subd. (i).)

Because PAGA allows a representative plaintiff to recover civil penalties on behalf of the state, "[a] PAGA representative action is . . . a type of qui tam action." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 382.) "When a plaintiff seeks civil penalties under the PAGA, he or she is not doing so as an individual, but instead as a representative of the state, and on behalf of similarly 'aggrieved' employees." (*Munoz v. Chipotle Mexican Grill, Inc.* (2015) 238 Cal.App.4th 291, 310 (*Munoz*).) " 'An employee plaintiff suing, as here, under the Labor Code Private Attorneys General Act of 2004, does so as the proxy or agent of the state's labor law enforcement agencies. The act's declared purpose is to supplement enforcement actions by public agencies, which lack adequate resources to bring all such actions themselves. (Stats. 2003, ch. 906, § 1 [Legislature's findings and declarations].)' " (*Ibid.*, quoting *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986 (*Arias*).)

Importantly, a PAGA representative cause of action exists separate and apart from any claims that are brought as putative class claims. Statutory class action requirements are not applicable to PAGA claims. (*Arias, supra*, 46 Cal.4th at p. 975; *Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1079 ["PAGA authorizes a representative action *without the need for class certification*" (italics added)].) A plaintiff's PAGA claim exists independent from any class claims, and a PAGA claim may survive despite the fact that a court has denied class certification with respect to the putative class claims asserted by a plaintiff. (See, e.g., *Munoz, supra*, 238 Cal.App.4th 291 [plaintiffs may not appeal denial of class certification where a plaintiff's PAGA claims remain pending because death knell exception does not apply in such a circumstance]; *Cortez v. Doty Bros. Equipment Co.* (2017) 15 Cal.App.5th 1, 9 [same]; see also *Young v. RemX, Inc.* (2016) 2 Cal.App.5th 630, 635–636; *Nguyen v. Applied Medical Resources Corp.* (2016) 4 Cal.App.5th 232, 243; *Miranda v. Anderson Enterprises, Inc.* (2015) 241 Cal.App.4th 196, 201–202.)

It is thus apparent that Delgado's PAGA claim is not resolved by a ruling that Delgado has failed to meet his burden of demonstrating the propriety of certifying a class. Thus, the court should not have issued an order limiting Delgado to obtaining individual relief only.

IV.

DISPOSITION

The trial court's order of September 1, 2017, denying class certification and limiting Delgado to pursuing individual relief only, is reversed, and the cause is remanded for further proceedings. Plaintiff is entitled to recover costs on appeal.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

DATO, J.